

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

BRV, Inc., d/b/a The Sun

Employer

and

Case 19-RC-14153

International Association of Machinists
And Aerospace Workers District
Lodge 160

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part time district managers and assistant district managers, but excluding all other employees, guards and supervisors as defined in the Act.

1. The Parties filed briefs, which have been considered.

INTRODUCTION

BRV, Inc. d/b/a The Sun (hereinafter "The Sun" or "the Employer") publishes and distributes newspapers. Its principal office is in Bremerton, Washington. The Sun's daily circulation is approximately 35,000 papers primarily in Kitsap County.² The newspaper consists of several departments, including newsroom, advertising, production, pressroom, mailing room and circulation departments. At issue in this dispute are select employees of the circulation department.

The circulation department is responsible for distributing newspapers to home delivery subscribers, news stands and stores. The Employer refers to delivery to subscribers as "home delivery" distribution. The current dispute centers on the status of employees within the home delivery section of the circulation department. The Employer refers to newsstands and stores as "single copy" distribution. Those functions are not at issue in this dispute.

The circulation department's home delivery section consists of a Circulation Director, Keith Tanoose, a Home Delivery Manager, Rodney Huber, five District Managers (hereinafter "DM"s), and two Assistant District Managers (hereinafter "ADM"s). In addition, approximately 180 home delivery carriers perform the function of delivering papers to The Sun's home delivery customers on regular delivery routes. The parties have stipulated that individuals performing the work of home delivery carriers (hereinafter "carriers") are independent contractors and are not employees of the Employer.

At issue in this dispute is whether the individuals serving as DMs are supervisory or managerial employees. Not surprisingly, there was conflicting testimony regarding the scope of the DMs duties and the degree of independent judgment involved in carrying out those duties. The Region's findings regarding the duties and responsibilities of the DMs are discussed in greater detail below. The parties have stipulated that if the Regional Director determines that DMs are neither supervisory nor managerial employees under the Act, that a unit consisting of DMs and ADMs would be appropriate. Alternatively, the parties have also stipulated that a unit consisting of only ADMs would be appropriate if the Region determines that DMs are either supervisory or managerial employees.

The carriers, ADMs and DMs work out of four Distribution Centers located in East Bremerton, West Bremerton, Port Orchard and Poulsbo, Washington. The carriers, ADMs and DMs are assigned to a particular Distribution Center and do not generally rotate among the centers during the regular course of business, with the exception of one ADM discussed below. In the ordinary course of business, truck drivers for The Sun deliver newspapers to the four Distribution Centers where carriers pick up the papers for delivery on regular routes to subscribers. Each Distribution Center is the coordination point for 20-70 newspaper delivery routes. The Distribution Centers are not always physical structures. Several are buildings, but at least one is simply a portion of a parking lot at a supermarket, which has been designated as a rendezvous point for this job function. The Sun uses the Distribution Centers between approximately 1:00 and 5:30 in the morning.

DMs are responsible for coordinating the smooth functioning of the Distribution Centers, with assistance from the ADMs. These responsibilities include opening and closing the

²The Regional Director takes administrative notice that Bremerton is in Kitsap County and that the transcript for this proceeding incorrectly designates the county name as "Clatsop."

Distribution Centers, maintaining records of supplies such as rubber bands and plastic bags used in the centers, maintaining records of the number of papers delivered, distributing circulation-related paperwork to carriers when they report to work at the centers, cleaning the centers, reporting any maintenance problems to Rodney Huber, the Home Delivery Manager, and serving as a back-up line of defense for problems which may arise with carriers during the course of their deliveries. Coverage for carriers includes performing tasks such as calling in to the central office to determine whether there are any customer complaints regarding deliveries, assisting carriers in case of road trouble, serving as a back-up delivery person if carriers and/or the carriers' substitutes are missing from work, executing contracts with carriers and ensuring that all routes have a delivery person to complete the deliveries.

The Home Delivery Manager, Rodney Huber, testified that he is ultimately responsible for the distribution of newspapers to home delivery subscribers. He reports to the Circulation Director, Keith Tanoose. The DMs report to Huber.

As of the date of the hearing in this matter, the five DMs included Jim Dungy, Helen Muralt, Dan Whiting, Noreen Hamren and Elaine Henslee. The two ADMs included Bruce Mylom and Frank Showalter. Only one Distribution Center – Poulsbo -- utilizes a full time ADM. Two Distribution Centers – East and West Bremerton -- share the other ADM between them, and the fourth Distribution Center – Port Orchard -- simply has two DMs assigned to work at that location. Port Orchard did not have an ADM assigned to it, nor were there plans to refill that position as of the time of the hearing. The other three of the four Distribution Centers use one DM apiece.³

Supervisory Status of District Managers

Section 2(11) of the National Labor Relations Act provides that persons serving as statutory supervisors are distinct from “employees” under the Act. A statutory supervisor is defined as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The Board also considers secondary indicia of supervisory status, such as the ratio of supervisors to employees, the compensation received by the alleged supervisors, and the perception of employees regarding the status of the alleged supervisors. While secondary indicia of supervisory status may be considered, they are not determinative in the absence of statutory indicia of supervisory status. Although the existence of any one statutory element can be sufficient to convey supervisory status, the “sporadic or occasional exercise of supervisory authority may be insufficient to make an employee a supervisor.” Laser Tool, 320 NLRB 105, 108 (1995).

³ The difference in staffing levels at the Distribution Centers did not appear to correlate to difference in their size of operations. Huber estimated that Port Orchard center supported 35 routes that West Bremerton and East Bremerton combined supported 70 routes, and that Poulsbo had 21 routes.

The statutory definition of a “supervisor” presumes that the individuals standing in relationship to “supervisors” be “employees” under the Act. Thus, an employee’s relationship to independent contractors would not render the employee a “supervisor” because independent contractors are distinct from employees as defined in the Act.

The Employer contends that DMs are supervisors relative to ADMs. The Union disputes this contention. In the present case, carriers are not employees but rather independent contractors. As such, it is not necessary or appropriate to determine whether DMs supervise carriers. It is, however, appropriate to determine whether DMs serve as supervisors to the ADMs.

The evidence does not show that DMs have the power to independently hire, transfer, suspend, lay off, recall, promote, reward or discharge ADMs, nor to effectively recommend such actions. Rather, the record revealed that ADMs are interviewed and hired by the Home Delivery Manager, and receive information about their job responsibilities from the Home Delivery Manager at the time of hire. There was no record evidence of DMs playing any role in decisions to transfer, suspend, lay off, recall, promote or discharge any ADM. There was no record evidence that DMs have the power to reward ADMs for performance achievements.⁴ Similarly, there was no evidence that DMs have the power to adjust the grievances of ADMs.⁵

Regarding discipline, the record revealed conflicting and conclusory evidence as to whether DMs have the authority to issue discipline to ADMs. Huber testified that DMs hold that authority, and DM Muralt testified that the DMs do not hold that authority but must simply report problems to Huber. The Employer asserted that DM Muralt on one occasion instructed a new ADM who failed a pre-employment drug screen not to come to work, but the evidence did not suggest that this was an independent decision by Muralt or a regular part of her duties. In addition, DM Jim Dungy testified as to an instance when he had complained to Huber about an ADM’s performance and asked for assistance resolving the problem. Similarly, Huber asserted that Dungy had issued a verbal reprimand to the same ADM. The evidence was less than clear as to whether Dungy asked Huber to institute specific corrective action against the ADM, and there was no documentary evidence of any record of discipline by Dungy against the ADM; further, there was no record evidence of any specific disciplinary action taken by Huber, nor of any improvement in the situation. Without evidence that disciplinary warnings have any effect on an employee’s employment status, the issuance of a warning is insufficient to establish supervisory authority. Azuza Ranch Market, 321 NLRB 811, 813 (1996). Furthermore, when evidence is in conflict or otherwise inconclusive regarding indicia of supervisory status, the Board will not find that supervisory status is established on those indicia. International Center for Integrative Studies/The Door, 297 NLRB 601 (1990). Mere transmission of management instructions on a single occasion does not render an employee a supervisor. There was no evidence that DMs independently instituted disciplinary actions against ADMs with any

⁴ In fact, although not determinative, it appears that ADMs are the only employees in the Distribution Centers who cannot apply for workplace rewards and bonuses. Carriers may be eligible to participate in promotional programs, and DMs may occasionally participate in similar programs.

⁵

In one instance, DMs and an ADM worked together to propose an hourly schedule, which suited their needs. However, the record does not suggest that this action was in response to an ADM grievance. Notably, the proposed schedule was submitted to the Home Delivery Manager, Huber, with a request for approval, and DM Muralt testified that she did not believe that she had the authority to implement the schedule without Huber’s approval.

consequence to the ADMs' positions. On these facts, I cannot conclude that DMs have authority to discipline ADMs or to effectively recommend such discipline.

Next, the Employer's witness Huber testified that DMs responsibly direct ADMs, but he also admitted that he had not personally observed the workplace interaction between DMs and ADMs on the job. To the extent that DMs may instruct ADMs to perform any work-related duties, such as handing out paperwork to carriers, locking or unlocking the doors of the District Centers if the first or last to leave, or performing their job functions, these instructions appear to be routine rather than requiring any independent judgment and simply follow the employer's expectations for the work of DMs and ADMs at the District Centers.

The Employer asserted that DMs approve overtime for ADMs, but apart from conclusionary testimony by Huber, he offered only hearsay evidence of one instance when a DM asked an ADM to work on two of his days off at the Poulsbo Distribution Center. Huber did not provide testimony as to his personal knowledge of the overtime interaction. While he affirmed opposing counsel's characterization of this work as "overtime", there was no evidence introduced as to whether the ADM in question was paid at an overtime rate for the work, nor evidence as to whether the overtime assignment was cleared through higher management. Moreover, isolated instances of the supervisory-like conduct will not render employees "supervisors" under Board law. NLRB v. Doctors' Hospital of Modesto, 489 F.2d 772, 776 (9th Cir. 1973). As such, I find that the weight of the evidence does not support the Employer's contention that DMs authorize overtime.

On the other hand, the record showed that there was regular interchange between DMs and ADMs with respect to many of their job duties, including opening and closing distribution centers, providing information to carriers, and covering routes for missing carriers. The record revealed that there were times that both ADMs and DMs worked at Distribution Centers without the assistance of the other, and that not every DM worked with an ADM directly. The Employer's witness, Huber, testified that he was unaware of anyone at The Sun instructing DMs as to what their responsibilities were relative to ADMs. Although there were two job descriptions for DMs in the record there was no evidence of a job description for ADMs. The record revealed that the Employer recently revised and distributed its job description for DMs and distributed copies of the revised job descriptions about a month and a half prior to the date of the hearing but did not reveal whether DMs customarily received the original job description. Regardless of which job description to apply, consistent testimony by the DMs suggested that the DMs' job descriptions did not accurately reflect the job duties of the DMs. Based on the absence of a job description for ADMs in the record and the record testimony that ADMs' job duties are quite similar to the job duties of DMs, I find that the Employer has not met its burden of proving DMs' supervisory status by pointing to any substantial difference between the two positions.

With respect to secondary indicia of supervisory status, the record revealed that there are only two ADMs working with the five DMs at The Sun. On these facts, the ratio of DMs to ADMs does not suggest that a supervisory relationship exists between them. Moreover, at one District Center, two DMs work together instead of a DM and an ADM pair. This fact corroborates the testimony of DMs that their work assignments and duties are essentially identical to the duties of ADMs. ADMs were recently converted from a salary to an hourly position, earning slightly lower hourly rate than the salaried DMs but eligible for overtime. There was no record evidence on whether the income of DMs and ADMs differs from one another after accounting for overtime hours of work beyond the 40-hour workweek.

The party asserting supervisory status carries the burden of proof, California Beverage Co., 283 NLRB 328 (1987). Based upon the foregoing and the record as a whole, I conclude this burden has not been met, as the evidence presented was insufficient to establish that DMs are supervisors.

Managerial Status of District Managers

The question remains as to whether DMs are managerial employees and therefore properly excluded from a bargaining unit. The Employer contends that DMs are managerial employees relative to carriers. The Union disputes this contention. While not expressly defined by the statutory language of the National Labor Relations Act, the Board has defined managerial employees as employees who formulate, determine or oversee employer policies and act independently of established policy to a meaningful degree. See, e.g., The Bakersfield Californian, 316 NLRB 1211, 1215 (1995), (following General Dynamics Corp., 213 NLRB 851, 857 (1974).) The Board does not consider titles determinative of supervisory status." Marukyo U.S.A., Inc., 268 NLRB 1102 (1984) (following Golden West Broadcasters, 215 NLRB 760, 761 (1974). That reasoning is equally applicable here. Consistent with this view, where similarly situated employees perform work within a narrow framework of established company policy, without the authority to substantially affect the economic terms of employment of carriers, and where their superiors routinely independently review their recommendations, the Board has found them to be employees under the Act. Twin Coast Newspapers, Inc., 305 NLRB 412 (1991).

To begin, the Employer in this case reasons that DMs are managers because they execute contracts with carriers. However, the Board has taken the opposite view where DMs do not themselves negotiate the terms of contracts they execute with carriers, where carriers' rates are set by the Employer, and where the DMs' supervisors retain the authority to deny proposals and recommendations made by the DMs. Reading Eagle, 306 NLRB 871, 872 (1992)

The Employer also contends that DMs are managers based on their power to change wage rates, split routes and consolidate routes within their districts. Under Board law, the mere fact that a District Manager has the power to split and consolidate routes within his or her district does not render that individual a 'manager' under the Board's formulation unless such decisions "substantially affect the Employer economically." The Bakersfield Californian, 316 NLRB 1211, 1218 (1995). Rather, the power to split or consolidate routes only indicates managerial authority where such decisions specifically impact the compensation paid to carriers. Bakersfield, at 1218 (interpreting Eugene Register Guard, 237 NLRB 205 (1978)). Here, however, the evidence suggests that wage rates are determined by an Employer-established formula and those deviations from that calculation must be approved by the Home Delivery Manager, Huber. In the present case, DMs execute contracts, which are drafted by The Sun. DMs do not have the power to change the terms of those contracts in any meaningful manner. While the contract states on its face that piece rates are "negotiated" rates, testimony by the Petitioner's witness revealed that DMs do not negotiate the piece rates with carriers. Although the Employer provided one example of a DM recommending a wage adjustment for a carrier reflected in the carrier's contract, the evidence also revealed that carriers' wages are customarily based on specific Employer-established criteria such as the number of miles of the route, the number of deliveries, and the amount of time the route requires.

The Employer provided a grid establishing piece rates for routes, and Huber testified that in the time he has served as Home Delivery Manager, those piece rates had never been changed. Thus, to the extent that a DM recommends or fills in the carrier contract with the

correct payment in accordance with those rates, the DM does not exercise independent judgment or impact the economic terms of the carriers, nor impact the Employer economically. There was conflicting testimony on whether the piece rates were set by the employer or by the DMs — but even if the piece rates were set by DMs, they are clearly based on the DMs' application of Employer-established criteria of the length and number of deliveries on routes. Furthermore, Huber's own testimony does not support the Employer's contention that DMs can set carriers' rates independently; rather Huber admitted that when DMs submit a suggestion for a wage rate change, "[I]n most cases I okay it." This testimony leads to the logical inference that Huber retains final authority over the decisions regarding changes to carriers' wage rates rather than vesting that authority in DMs and is consistent with the Petitioner's claim that Huber retains final decision-making authority on this point.

Huber also provided testimony regarding two Employer exhibits showing an example of a change to the piece rate for a carrier. However, he provided no direct testimony on whether the example of change was independently implemented by the DM or involved approval by the Home Delivery Manager. Lastly, in its brief the Employer alluded to one example where a DM reportedly changed a wage rate without prior approval from Huber. However, Huber testified on the record that he could not remember a single example of a DM changing a piece rate without his approval. The record does not reveal whether any such change would have been a departure from the Employer's guidelines, or a correction to comport with the Employer's guidelines, or an adjustment in connection with a route change. Nor is there evidence of consequence to the Employer economically. Furthermore, even assuming such change did occur, there is no other evidence to suggest that it was more than an isolated occurrence.

Huber testified that under normal circumstances, carrier routes are designed by The Sun rather than by DMs. He explained that only in special circumstances where a route becomes overgrown or too small might a DM consolidate or split the Employer's previously determined routes. In addition, DM Helen Muralt offered un rebutted testimony that Huber had instructed *her* that DMs were required to obtain Huber's approval prior to splitting or consolidating routes. Furthermore, Huber testified that in the time he has served as Home Delivery Manager, no piece rates have been changed from the Employer's established piece-rate grid, although routes have been changed during his tenure. There was no evidence presented by Huber that route splits or consolidations have resulted in changes to piece rates or to the Employer's bottom line for carrier compensation. On the basis of the evidence before me, I conclude that while DMs may make recommendations for route changes -- or even for wage rates on the basis of applying the Employer's established criteria, such recommendations do not rise to the level of independent judgment and are subject to review. Therefore, the available evidence does not support the view that DMs have the independent power by changing route to impact either carrier compensation or the economics of the Employer, and Board precedent does not support a finding that DMs are managerial employees on this ground.

Next, the Employer reasons that DMs are managers because they recruit, train and have the authority to terminate carriers. The Board has specifically recognized that employees serving as District Managers in the newspaper business may recruit, interview, train and even terminate carriers who serve as independent contractors without classifying such DMs as either supervisors or managers. See e.g., The Bakersfield Californian, 316 NLRB 1211, 1217 (1995); Reading Eagle, 306 NLRB 871 (1992). Under Board precedent, these responsibilities in and of themselves do not suffice to render a District Manager employee a "manager" or statutory supervisor under the law, unless they involve the exercise of independent judgment and the ability to affect the Employer economically. In the instant case, DMs recruit, train, and hire carriers in accordance with the Employer's established policies. The uncontroverted testimony

by Helen Muralt revealed that recruiting work was based on Huber's contacts with individuals responding to advertisements, that Huber provides all contact numbers of applicants to the DMs, and that as a DM Muralt conducts interviews on the basis of a list of questions Huber suggested that she use for carrier interviews. The record also reveals that The Sun produces its carrier handbooks, checklists, video orientation materials, bonus plans, rules, customer lists, maps, contests, and wage rate schedules, and drafts the terms of the Distribution Agreements, which carriers must follow in performing their jobs. Huber testified that he provides DMs with copies of the Employer's handbook and suggests that they distribute it to all carriers, and DM Helen Meralt testified that if carriers follow the guidelines in the handbook they would not run into disciplinary problems with The Sun or with the DMs. With the exception of filling in the piece rates discussed previously, there is no evidence that DMs play any role in drafting or determining the contents of these Employer policies or materials. Rather, the DMs implement the Employer's policies in dealing with the carriers. Implementation of pre-established Employer policies does not rise to the level of managerial authority.

The record was inconsistent on the DMs' authority to terminate carriers. The Employer provided one example of a carrier termination letter signed by a DM, but testimony by Huber revealed that most carrier terminations are sent by the Employer rather than through a DM. Therefore, the evidence does not support a finding that DMs are managerial employees on the basis of authority to terminate carriers.

The Employer also asserts that DMs are managerial on the basis of the administrative functions they perform in the Distribution Centers. These functions include maintaining reports about supplies such as rubber bands and plastic bags, recording data about truck arrival times and reporting it to higher management, reporting maintenance problems to higher management, and opening and closing the centers. ADMs also perform these functions. I find that these activities are not indicia of managerial authority but are more in the nature of routine administrative activity.

In addition to the authorities discussed above, the Employer also contends that DMs are managers because they have the power to implement bonus programs for carriers. However, the bonus programs, which DMs implement, are designed and distributed by the Employer rather than by the DMs. The Employer developed several marketing incentive programs for both carriers and DMs entitled, "Tis the Luck of the Irish", and DMs merely administer the program. The Employer also instructs DMs as to criteria that they may use to provide a once-per-month award of \$25.00 to the best carrier, suggesting that the DMs base their award on the carrier with the fewest customer service complaints. Furthermore, the weight of the evidence does not suggest that DMs deviate from the Employer's designs for these promotional programs. Thus, the DMs' administration of Employer created bonus plans and incentive programs do not render them managerial employees.

Next, the Employer asserts that DMs are managerial employees on the basis of their alleged performance of other duties as set forth by their job description such as monitoring sales and service of the newspaper. The record evidence also indicates that The Sun utilizes a Customer Service department to track customer complaints and satisfaction. The testimony by DMs established that the job description offered was not an accurate reflection of the duties and responsibilities that DMs perform. Thus, on the basis of the record as a whole, I do not find that the additional duties listed on the DMs' job description render them "managers" under Board law. While the record showed that DMs make recommendations about how to process customer complaints related to carriers, Huber retains the power to make final decisions regarding customer complaints. Similarly, in The Bakersfield Californian, the DMs made

recommendations regarding whether their carriers should be subject to discipline based on customer complaints, but were nonetheless found not to be acting as managers. 316 NLRB 1211, 1216 (1995).

Lastly, the Employer provided testimony that on one occasion a DM recommended that a customer's subscription be cancelled based on the customer's inaccessibility. This evidence does not lead to the conclusion that the DMs are managerial employees, because the event is an isolated occurrence and because the Home Delivery Manager retained the final authority to approve the DM's recommendation in this instance.

In summary, the Employer relies heavily on the premise that DMs have the authority to split and consolidate routes and adjust carrier compensation in an effort to distinguish the present case from prior conflicting authority. Reading Eagle, 306 NLRB 871 (1992); Eugene Register Guard, 237 NLRB 205 (1978). This reliance is misplaced. As the Board explains in both Reading Eagle and Bakersfield Californian, *supra*, the Board's reasoning for finding DMs to be either Managers or employees in earlier cases did not turn simply on the specific job duties performed by the DMs but on whether those duties had the power to impact the employer economically. In the present case, although DMs exercise the power to split and consolidate routes, those changes apparently do not impact the employer economically because the wage rates for carriers retain their connection to the Employer's formula for calculating those rates and because the Employer retains control over both the changes to piece rates and the final approval of route changes. There is no record evidence that the splitting or consolidating of routes has had economic impact on the employer, nor evidence that DMs customarily depart from these Employer-generated formulae in setting wage rates for carriers without approval from higher management.

CONCLUSION

In conclusion, on the basis of the record evidence, I do not find that DMs are either supervisory employees or managerial employees. Accordingly, I find that the District Managers are in the unit and will be permitted to vote.

There are approximately 7 employees in the unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether

or not they desire to be represented for collective bargaining purposes by INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS DISTRICT LODGE 160.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Resident Officer in Anchorage within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before October 26, 2001. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (907) 271-3055. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by November 2, 2001.

DATED at Seattle, Washington this 19th day of October 2001.

Raymond D. Willms, Acting Regional Director
National Labor Relations Board
2948 Jackson Federal Building

915 Second Avenue
Seattle, WA 98174

177-2484-5033
177-2484-5067
177-8540-2700